Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHN PAUL WARREN,

Petitioner,

v.

MORRIS CERULLO WORLD EVANGELISM AND MORRIS CERULLO,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal Fourth Appellate District, Division One

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Religion Clauses of the First Amendment to the United States Constitution bar judicial review of a minister's state law intentional tort claims against a religious organization, which claims arise out of conduct of the religious organization unrelated to any adverse employment decision affecting the minister and perpetrated without doctrinal or theological motivation.[1]

More generally, this Court is presented a *res nova* issue regarding the proper application of First Amendment religious freedom principles to a state law tort action between a clergy member and a religious organization.

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[1] At all times in the proceedings in the state courts of California in this matter, Petitioner, John Paul Warren, has vehemently contested that he was a "minister" with Morris Cerullo World Evangelism or that Morris Cerullo World Evangelism constitutes a "church" or "religious organization," such that the "ministerial exception" derived from the Religion Clauses of the First Amendment to the United States Constitution did not apply to bar adjudication of his claims. For purposes of this Petition for Writ of Certiorari only, Petitioner will refrain from making such factual arguments to this Court and, in order to narrow the issue to one of law, will proceed as though these facts are not at issue.

STATEMENT PURSUANT TO RULE 29.6

Petitioner is an individual and not a non-governmental corporation, such that the corporate disclosure statement required by Rule 29.6 is inapplicable.

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CITATIONS OF OPINIONS OR ORDERS ENTERED IN THE CASE

None of the orders or opinions entered in this case in the courts of the State of California have been published in any official reporter service. The opinion of the California Court of Appeal, Fourth Appellate District, Division One, sought to be reviewed by this Petition for a Writ of Certiorari appears informally at *Morris Cerullo World Evangelism v. Superior Court*, No. D038029, 2001 WL 1654473 (Cal. App. 4 Dist. Dec. 12, 2001).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . "

2. California Labor Code § 970 provides:

> No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:
>
> (a) The kind, character, or existence of such work;
>
> (b) The length of time such work will last, or the compensation therefor;
>
> (c) The sanitary or housing conditions relating to or surrounding the work;

(d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought.

STATEMENT OF JURISDICTION

Petitioner seeks a writ of certiorari issued to the California Court of Appeal, Fourth Appellate District, Division One, for review of its decision entered December 12, 2001. Petitioner requested rehearing in the Court of Appeal on December 26, 2001, which request the Court of Appeal denied on January 3, 2002. Thereafter, Petitioner filed a Petition for Review with the California Supreme Court, which court denied Petitioner's bid for review on February 20, 2002.

Accordingly, Petitioner seeks review of the final decision of the Court of Appeal holding Petitioner's state-law tort claims barred from adjudication by civil courts pursuant to the Religion Clauses of the First Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. § 1257. *See Cohen v. California*, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, John Paul Warren, respectfully petitions for issuance of a writ of certiorari to review the unpublished opinion of the California Court of Appeal, Fourth Appellate District, Division One (per Huffman, McIntyre, and O'Rourke, JJ.) ("Court of Appeal") filed on December 12, 2001, which directs the trial court to vacate its order denying summary adjudication of issues as to Petitioner's first (fraud and deceit) and second (violation

of California Labor Code § 970) causes of action and to enter a new order granting the motion as to those claims on the grounds that Petitioner's claims fall within the scope of the ministerial exception and that review of these claims would amount to an excessive government entanglement with religion, thereby making judicial review of these claims a violation of the Religion Clauses of the First Amendment to the United States Constitution.

A. The underlying claim.

Morris Cerullo World Evangelism ("MCWE") is a California non-profit corporation with its base of operations in San Diego, California. Morris Cerullo ("Cerullo") is the founder, president, chief executive officer and lifetime chairman of the board of MCWE. In 1995, Petitioner, an ordained Assemblies of God minister, became acquainted with MCWE and Cerullo and, at Cerullo's invitation, began to participate in the evangelical ministries of MCWE throughout the world, and specifically in a campaign called Mission to All the World, which launched in 1997.

Over the course of the relationship between Petitioner and Cerullo prior to March, 1998, Cerullo made numerous oral promises to Petitioner, in an effort to have Petitioner join with him in a partnership – Petitioner to be Cerullo's "second in command" and "successor" at MCWE to take over handling the management and administrative details of the MCWE organization and, ultimately, to succeed the aging Cerullo in commanding the organization. These promises were confirmed in writing by Cerullo on March 19, 1998, and at various times thereafter both orally and in writing. Cerullo made numerous other promises to Petitioner to induce him to partner with Cerullo and MCWE.

Relying upon the promises made by Cerullo, Petitioner left the churches he was pastoring in Northern California, moved to San Diego, and partnered with Cerullo and MCWE in March, 1998, and, thereafter, began to provide administrative and managerial services at MCWE. Unfortunately, neither Cerullo nor MCWE ever intended to fulfill its promises to Petitioner; none of those promises were ever fulfilled; and Petitioner was ousted from the partnership by Cerullo in November, 1999, Cerullo citing Petitioner's inability to handle the administrative details of the organization as the basis for his ouster. As a result of the fraud and deceit perpetrated by Cerullo and MCWE, Petitioner suffered extensive damages.

B. The trial court's denial of MCWE's and Cerullo's motions for summary judgment/summary adjudication.

Petitioner filed his original complaint in this matter on May 19, 2000, asserting five (5) causes of action against MCWE and Cerullo – fraud and deceit (1st cause), violation of California Labor Code § 970 (2nd cause),[2]

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[2] Because the statutory basis for this claim lies in the California Labor Code, it is understandable that Cerullo and MCWE would single out this claim as employment-related and, thus, barred by the ministerial exception. However,

> Labor Code section 970 creates a statutory tort cause of action. It prohibits an employer or potential employer from inducing an employee or prospective employee to relocate his or her residence through means of a knowingly false representation concerning the terms or conditions of employment. Related statutes provide that violation of section 970 is a misdemeanor (Labor Code § 971), and that an aggrieved person may recover double damages for a

intentional interference with economic relationship (3rd cause), and statutory and common law misappropriation of trade secrets (4th and 5th causes). *See* Appx. at 32-54. On or about March 16, 2001, MCWE and Cerullo filed a joint motion for summary judgment or, in the alternative, for summary adjudication directed to all of Petitioner's claims, asserting that Petitioner's allegations set forth nothing more than an employment dispute between a minister and his former religious employer and that such claims are barred from adjudication in civil courts by the "ministerial exception" derived from the Religion Clauses of the First Amendment to the United States Constitution.

On April 30, 2001, the trial court issued a telephonic ruling pursuant to San Diego Superior Court Local Rule 5.20 denying the summary judgment/summary adjudication motion as to Petitioner's first and second causes of action, continuing the hearing on Petitioner's third cause of action, and granting the motion as to the fourth and fifth causes of action. MCWE and Cerullo requested oral argument on their motion, which was held on May 11, 2001. After hearing the arguments of counsel, the trial court adopted its ruling of April 30, 2001. Thereafter, on May 14, 2001, the trial court granted Petitioner's motion to amend his complaint to assert a sixth cause of action

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violation. (Labor Code § 972.) The statutory scheme is thus a statutory tort cause of action. . . .

See Burden v. County of Santa Clara (2000) 81 Cal.App.4th 244, 253. In other words, Labor Code § 970 merely represents legislative recognition of a specifically egregious form of fraudulent conduct. Accordingly, for ease of reference in this Petition, Petitioner will refer to both his first cause of action for common-law fraud and deceit and his second cause of action for statutory fraudulent misrepresentation and knowingly false enticement collectively as state tort law claims.

for partnership dissolution, an accounting and appointment of a receiver.

The trial court denied Cerullo's and MCWE's motion for summary judgment/summary adjudication on Petitioner's first and second causes of action on the bases that "[a] triable issue of material fact exists as to whether plaintiff's claims arise out of or relate to an employment dispute as opposed to a partnership that plaintiff purportedly entered into with defendants. A triable issue of material fact exists as to whether defendant Morris Cerullo sought out plaintiff and entered into a partnership with him. A triable issue of material fact exists as to whether defendant Morris Cerullo knowingly made false representations without a promise to perform." *See* Appx. at 27.

C. The Court of Appeal's decision.

On or about May 31, 2001, MCWE and Cerullo petitioned the Court of Appeal for relief from the trial court's denial of summary judgment and summary adjudication on Petitioner's first and second causes of action, principally on the basis the "ministerial exception" precludes judicial review of Petitioner's claims. The appellate court heard oral argument on November 14, 2001. By decision filed December 12, 2001, the Court of Appeal reversed the trial court's ruling and directed that summary adjudication be entered in favor of MCWE and Cerullo on Petitioner's first and second causes of action.

The Court of Appeal described its task as follows:

> Resolving the issues presented requires us to discuss the interplay of tort theories in the employment context with constitutional First Amendment protections for the free exercise of religion and against its establishment by civil government. We are also required to consider

> the extent to which nonwork-related rights and duties may exist within a working relationship in the religious context.

See Appx. at 2. So stated, the Court of Appeal "proceed[ed] to examine the legal issues actually presented on the fraud/deceit and the relocation misrepresentation claims in this particular factual context." *Id.* at 10. In this regard, the Court of Appeal framed the following legal issues:

> . . . [W]e examine the summary adjudication papers to determine if there is a sufficient state interest in adjudicating this particular dispute that will "override the interest claiming protection under the Free Exercise Clause." If resolution of the dispute, as requested, would foster " 'an excessive government entanglement with religion,' " in violation of the establishment clause, then the civil courts should refrain from inquiring into the merits of the dispute. For example, where addressing the merits of the dispute would implicate theological or doctrinal issues, the civil courts will not cross that threshold.
>
> However, to the extent a primarily secular dispute involving property rights or torts is presented, with only incidental involvement of any ecclesiastical matters, the courts have a duty to adjudicate such matters as are properly brought before them. . . .

Id. at 16-17 (citations omitted).

The Court of Appeal held that "[t]his record as a whole demonstrates an inescapable religious character of this dispute that is inextricably tied up with the spiritual beliefs of the participants. . . . As such, the civil courts must refrain from crossing the threshold of this essentially internal matter of a religious body and its personnel operations, due to the protections of the free exercise

clause." *Id.* at 24-25. Continuing, the appellate court further held "with respect to the fraud/deceit and relocation causes of action, we believe that sorting out the secular and religiously-based reasons for the respective parties' conduct, and whether it is actionable, would amount to 'an excessive government entanglement with religion,' in violation of the establishment clause." *Id.* at 25-26. Consequently, the Court of Appeal granted MCWE's and Cerullo's writ of mandate and directed the trial court to vacate its order denying the summary adjudication of issues as to Petitioner's first and second causes of action and to enter a new order granting the motion in favor of MCWE and Cerullo. In so concluding, however, the Court of Appeal never specified the religious beliefs or practices of MCWE and Cerullo, or the matters of internal administration, that were subject to being infringed by adjudication of Petitioner's claims, other than to imply that the allegations set forth a minister-church employment dispute barred by the "ministerial exception."

D. Subsequent proceedings in the California courts.

On December 26, 2001, Petitioner filed a timely Petition for Rehearing with the Court of Appeal, arguing the Court of Appeal had erred in concluding the "ministerial exception" applied to bar civil court review of his first and second causes of action, as those claims arose out of conduct not bound up in any employment dispute, but giving rise to state-law tort claims unrelated to religious doctrine, and, alternatively, in failing to find genuine issues of material fact regarding the various elements of the "ministerial exception" on the record in this matter. The Court of Appeal summarily denied the Petition for Rehearing on January 3, 2002. *See* Appx. at 30.

Thereafter, Petitioner timely filed a Petition for Review with the California Supreme Court, raising the

following issues: (1) whether the ministerial exception's absolute bar to judicial review of church-minister employment disputes applies to a dispute arising out of tortious conduct on the part of a religious organization when those actions, though directed at a minister, are unrelated to any adverse employment decision and are perpetrated without doctrinal or theological foundation; (2) when a dispute involving a religious organization is not subject to the ministerial exception, does the religious organization which raises the Religion Clauses of the First Amendment to the United States Constitution as an affirmative defense bear the burden of articulating a specific religious belief or practice that will be infringed by enforcement of otherwise neutral provisions of state law to sustain its defense; and (3) if the ministerial exception applies to state-law tort actions unrelated to any adverse employment decision and perpetrated without doctrinal or theological foundation, whether the Court of Appeal erred by resolving issues of material fact – particularly (i) whether MCWE is a church or religious organization entitled to the protections of the ministerial exception, (ii) whether Warren was a "minister" employed by MCWE, (iii) whether the relationship between Warren and MCWE and Cerullo was an employer/employee relationship as would potentially implicate the ministerial exception, and (iv) whether the claims raised by Warren constitute tort claims outside of the scope of the ministerial exception – and, thereafter, making a legal determination based upon those factual findings that the ministerial exception applied to this case, notwithstanding that the procedural posture of this case before the Court of Appeal was a review of the trial court's denial of a summary judgment/summary adjudication motion on the basis that triable issues of material

fact existed. The California Supreme Court denied the Petition for Review on February 20, 2002. *See* Appx. at 31.

ARGUMENT

For far more than a century, this Court has held that civil courts cannot adjudicate internal church disputes involving matters of faith, doctrine, church governance, and polity. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871). The vast majority of federal circuit courts have adopted a specific application of this principle of religious autonomy to preclude employment-related claims by clergy against churches and religious organizations, which has become known as the "ministerial exception." *See Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739 (1986); *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S.Ct. 132, 34 L.Ed.2d 153 (1972); *Young v. Northern Ill. Conf. of United Methodist Church*, 21 F.3d 184 (7th Cir.), *cert. denied*, 513 U.S. 929, 115 S.Ct. 320, 130 L.Ed.2d 281 (1994); *Scharon v. St. Luke's Episcopal Presbyterian Hosps.*, 929 F.2d 360 (8th Cir. 1991); *Bollard v. California Province of the Soc'y of Jesus*, 196 F.3d 940 (9th Cir. 1999); *Gellington v. Christian Methodist Episcopal Church*, 203 F.3d 1299 (11th Cir. 2000); *E.E.O.C. v. Catholic Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996). This Court, however, has not yet expressly approved the "ministerial

exception." Nevertheless, MCWE and Cerullo have relied upon the ministerial exception, as well as the broader concept of religious autonomy, to defend Petitioner's claims in this matter.

But Petitioner's claims present the Court with a factual scenario that implicates neither the ministerial exception nor the broader concept of religious autonomy adopted by this Court. To the contrary, Petitioner seeks redress for intentionally tortious conduct perpetrated prior to Petitioner entering into a relationship with MCWE and Cerullo and in order to induce such a relationship, such that Petitioner's claims are outside the scope of the ministerial exception. Moreover, MCWE and Cerullo failed to set forth, and the Court of Appeal failed to identify, any specific, sincere religious belief or practice, or any matter of internal church administration, threatened by adjudication of Petitioner's fraud and deceit claims, such that the broader First Amendment concerns sought to be preserved by this Court's religious autonomy jurisprudence are not implicated. Lastly, under this Court's recent redirection of its religious freedom jurisprudence toward "neutrality" – i.e., equality of treatment between religion and non-religion – subjecting religious organizations to state-law tort claims arising out of conduct with no basis in religious doctrine and, thus, threatening no infringement upon religious belief or practice, is constitutionally permissible. Consequently, the issue presented to this Court is under what circumstances, if any, do the Religion Clauses of the First Amendment to the United States Constitution bar judicial review of a state-law tort claim arising out of the tortious conduct of a religious organization, when that conduct is directed at a minister, but is unrelated to any adverse employment decision and is perpetrated without doctrinal or theological motivation.

A. This Court should embrace the "ministerial exception" as a proper application of its religious autonomy jurisprudence under the Religion Clauses of the First Amendment to the United States Constitution, but in doing so should circumscribe the doctrine's application to that class of employment-related claims for which it was crafted and should conclude that Petitioner's state-law tort claims fall outside the doctrine's domain.

Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. §§ 2000e, et seq., makes it an unlawful employment practice to discriminate on the basis of race, color, religion, sex, or national origin. Originally, Title VII exempted from its prohibition against employment discrimination based on religion the employment by religious organizations of persons "to perform work connected with the carrying on by such [organization] of its religious activities. . . . " *See* 42 U.S.C. § 2000e-1(a) (1964). Congress amended Title VII in 1972 to remove the adjective "religious" in front of "activities," thereby broadening the application of the exemption. *See* 42 U.S.C. § 2000e-1(a) (as amended March 24, 1972 by P.L. 92-261, § 3, 86 Stat. 103). Although Title VII, as amended in 1972, exempts religious organizations from the prohibition against employment discrimination based on religious creed, the provisions of Title VII prohibiting employment discrimination based on race, color, sex, or national origin remain applicable to religious organizations under the statute.

However, in *McClure v. Salvation Army*, the United States Fifth Circuit Court of Appeals first recognized that the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution precluded the application of these provisions of Title VII to employment decisions by religious organizations concerning

ministers. This constitutionally-derived exception to Title VII has become known as the "ministerial exception." Consequently, the ministerial exception originated as a jurisprudential exception to the anti-discrimination provisions of Title VII in the context of an employment dispute between a religious organization and its employee minister.[3]

In its scope of application, the ministerial exception is a per se rule. As stated by the United States Ninth Circuit Court of Appeals:

> Some religious interests under the Free Exercise Clause are so strong that no compelling state interest justifies government intrusion into the ecclesiastical sphere. . . .
>
> * * *
>
> A church's selection of its own clergy is one such core matter of ecclesiastical self-governance with which the state may not constitutionally interfere. . . . Indeed, the ministerial relationship lies so close to the heart of the church that it would offend the Free Exercise Clause simply to require the church to articulate a religious justification for its personnel decisions. . . .

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[3] The exception has been extended to apply to employment discrimination claims other than pursuant to Title VII, *see, e.g., Starkman v. Evans*, 198 F.3d 173 (5th Cir. 1999), *cert. denied*, 531 U.S. 814, 121 S.Ct. 49, 148 L.Ed.2d 18 (2000) (barring claim pursuant to the Americans With Disabilities Act); *Minker v. Baltimore Annual Conf. of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990) (barring claim pursuant to Age Discrimination in Employment Act), and subsumes all employment-related claims between clergy and church, however denominated, pertaining to selection and retention of clergy.

Bollard, 196 F.3d at 946 (citations omitted). In other words, the ministerial exception represents a pre-determined balancing of the interest in eradicating employment discrimination and the right of a church to manage its religious affairs free from governmental interference, with the result being that, under the circumstances which implicate the exception, the scales will always tip in favor of preserving the religious freedom of churches to select their clergy.

"But the scope of the ministerial exception to Title VII is limited to what is necessary to comply with the First Amendment[,]" *Bollard*, 196 F.3d at 947, and "the first amendment does not immunize the church from all temporal claims made against it." *Minker*, 894 F.2d at 1360. Indeed, "[w]hile the ministerial exception promotes the most cherished principles of religious liberty, its contours are not unlimited and its application in a given case requires a fact-specific inquiry." *E.E.O.C. v. The Roman Catholic Diocese of Raleigh, North Carolina*, 213 F.3d 795, 801 (4th Cir. 2000). In this regard, this Court must not lose sight of the genesis of the exception – i.e., the removal of religious employer's employment decisions affecting ministers from the purview of the employment discrimination laws. "[C]hurches are not – and should not be – above the law. Like any other person or organization, they may be held liable for their torts. . . . " *Rayburn*, 772 F.2d at 1171.

In the present case, it is indisputable that Petitioner has not asserted an employment discrimination claim – or an employment-related claim of any sort, for that matter – as would directly implicate the ministerial exception. Instead, Petitioner's claims are grounded in principles of California tort law, and Petitioner makes no challenge to any employment decision by MCWE and Cerullo, such

that "the aspect of the church-minister employment relationship that warrants heightened constitutional protection – a church's freedom to choose its representatives – is [not] present." *Bollard*, 196 F.3d at 947. Accordingly, while Petitioner acknowledges the ministerial exception as a proper application of this Court's existing First Amendment religious autonomy jurisprudence, Petitioner also submits this Court should set forth with specificity the parameters of its application, including circumscribing its scope to include only those claims which spawned its formulation – i.e., adverse employment decisions by a church or religious organization pertaining to a minister – of which the present claims are not.

B. Petitioner's state-law tort claims not only fail to implicate the specific First Amendment religious freedom concerns protected by the ministerial exception, but also fail to implicate any more generalized interests protected by the Religion Clauses of the First Amendment.

Although the ministerial exception does not apply to this case, the constitutional inquiry does not end. MCWE's and Cerullo's claims of protection under the Religion Clauses of the First Amendment to the United States Constitution, although not supported by the ministerial exception, nonetheless require that this Court, as purportedly done by the Court of Appeal, evaluate the threat to religious freedoms posed by adjudicating Petitioner's claims. In this regard, the Court of Appeal's decision conflicts with the decisions of various state and federal courts addressing similar situations and deviates from the principles of this Court's First Amendment religious freedom jurisprudence.

1. The Free Exercise Clause.

The Free Exercise Clause provides that "Congress shall make no law . . . prohibiting the free exercise [of religion]. . . . " *See* U.S. Const. Amend. I. In determining whether the proposed application of a state law violates the Free Exercise Clause, this Court has held that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 2226, 124 L.Ed.2d 472 (1993) (citing *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)). In other words, "if prohibiting the exercise of religion . . . is not the object of the [state law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." *Smith*, 494 U.S. at 878, 110 S.Ct. at 1600, 108 L.Ed.2d 876. It is clear that the principles underlying California's tort laws of fraud and deceit have evolved without regard to the practices of any religion and that they are uniformly applicable whether the conduct in question is religiously inspired or not. Accordingly, these state-law principles are clearly neutral, both in content and in application, and are generally applicable, such that no colorable claim can be made that these laws offend the Free Exercise Clause. *See, e.g., Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (" 'The elements of [common-law] fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' "); *Watchtower Bible & Tract Soc'y of New York, Inc. v. Village of Stratton*, 240 F.3d 553, 568-569 (6th Cir.)

(rejecting Free Exercise challenge to permitting ordinance aimed at preventing fraud), *cert. granted in part on other grounds*, ___ U.S. ___, 122 S.Ct. 392, 151 L.Ed.2d 297 (2001).

Moreover, "[o]nly beliefs rooted in religion are protected by the Free Exercise Clause. . . . " *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714, 101 S.Ct. 1425, 1430, 67 L.Ed.2d 624 (1981); *see also Bryce v. Episcopal Church in the Diocese of Colo.*, No. 00-1515, 2002 WL 797794, *6 (10th Cir. April 30, 2002) ("Before the church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is 'rooted in religious belief.' *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). . . . "). " '[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection[,]' " but must be sincerely held by their proponent. *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 531, 113 S.Ct. at 2226, 124 L.Ed.2d 472; *see also Jimmy Swaggart Ministries v. Board of Equalization of Cal.*, 493 U.S. 378, 392, 110 S.Ct. 688, 697, 107 L.Ed.2d 796 (1990) ("Appellant has never alleged that the mere act of paying the tax, by itself, violates its sincere religious beliefs."); *Frazee v. Illinois Dept. of Employment Sec.*, 489 U.S. 829, 833-834, 109 S.Ct. 1514, 1517-1518, 103 L.Ed.2d 914 (1989). In this case, MCWE and Cerullo have never asserted, and the Court of Appeal failed to identify, any sincerely held religious belief subject to being infringed by enforcement of California's tort laws of fraud and deceit. For the foregoing reasons, and as more fully explained in subsection 3, *infra*, the Free Exercise Clause does not pose an obstacle to adjudication of Petitioner's state tort law claims.

2. The Establishment Clause.

The Establishment Clause provides "Congress shall make no law respecting an establishment of religion. . . . " *See* U.S. Const. Amend. I. In *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971), the United States Supreme Court set forth a three-part test to determine whether a state law violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." *Lemon*, 403 U.S. at 612-613, 91 S.Ct. at 2111, 29 L.Ed.2d 745 (citations omitted). Again, with regard to California's tort law principles of fraud and deceit, there can be no dispute that enforcement of these principles is secular in its purpose and does not have as its principal or primary effect to advance or inhibit religion. Accordingly, the only Establishment Clause issue is whether enforcement of these principles fosters an excessive government entanglement with religion.

3. The Court of Appeal misapplied the Religion Clauses of the First Amendment in the context of this state-law tort claim in contravention of the decisions of various state and federal courts and the religious freedom principles of this Court's First Amendment jurisprudence.

Based on the principles espoused by this Court, to implicate either of the Religion Clauses there must be at issue a religious belief or practice subject to infringement by the enforcement of the state law. Because the Religion Clauses are being raised as an affirmative defense by MCWE and Cerullo in this case, Petitioner submits it is incumbent upon them to articulate a specific religious belief or practice that would be implicated by judicial

resolution of this controversy. *See* Cal. Evid. Code § 500. In this regard, *Drevlow v. Lutheran Church, Missouri Synod*, 991 F.2d 468 (8th Cir. 1993), and *Bollard* are instructive.

In *Drevlow*, a Lutheran minister filed suit seeking damages from the Synod under Missouri law for libel, negligence and intentional interference with his legitimate expectancy of employment. The essence of the minister's claims was the Synod's inclusion of false information in his personal file, which file was being circulated by the Synod to churches with whom the minister was seeking employment. Denying the Synod's motion to dismiss based on the First Amendment, the *Drevlow* court held:

> The First Amendment proscribes intervention by secular courts into many employment decisions made by religious organizations based on religious doctrine or beliefs. Personnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law. The First Amendment does not shield employment decisions made by religious organizations from civil court review, however, where the employment decisions do not implicate religious beliefs, procedures, or law. . . . The Synod has not offered any religious explanation for its actions which might entangle the court in a religious controversy in violation of the First Amendment. [The plaintiff] is entitled to an opportunity to prove his secular allegations at trial.

Drevlow, 991 F.2d at 471-472 (citations omitted).

In *Bollard*, the plaintiff was a novice of the Society of Jesus, an order of Roman Catholic priests more commonly known as the Jesuits. As a novice, he began the process toward ordination as a Catholic priest. The plaintiff alleged that, during the course of his studies, he was

sexually harassed by his superiors to such a degree that he was forced to leave the Jesuit order before being able to take his vows to become a priest. On this basis, he filed suit for sexual harassment under Title VII, as well as state law claims for failure to investigate, for constructive wrongful discharge and for breach of contract. The federal district court held the ministerial exception barred the plaintiff's Title VII claim and declined to exercise its supplemental jurisdiction over his state law claims. *Bollard*, 196 F.3d at 944.

The *Bollard* court declined to apply the ministerial exception, concluding

> . . . [T]his is not a case about the Jesuit order's choice of representative, a decision to which we would simply defer without further inquiry. Bollard does not complain that the Jesuits refused to ordain him or engaged in any other adverse personnel action. . . .
>
> The only relevant decision that we can reasonably attribute to the Jesuits on the facts alleged here is the decision not to intervene to stop or curtail the sexual harassment Bollard reported. But, in our view, it strays too far from the rationale of the Free Exercise Clause to extend constitutional protection to this sort of disciplinary inaction simply because a minister is the target as well as the agent of the harassing activity. . . . The Free Exercise Clause rationale for protecting a church's personnel decisions concerning its ministers is the necessity of allowing the church to choose its representatives using whatever criteria it deems relevant. That rationale does not apply here, for the Jesuits most certainly do not claim that allowing harassment to continue unrectified is a method of choosing their clergy. Because there is no protected-choice rationale at issue, we intrude

> no further on church autonomy in allowing this case to proceed. . . .

Id. at 947 (citations omitted). Accordingly, the court found no protected religious belief or practice at issue, such that application of the neutral and generally applicable provisions of Title VII to the plaintiff's claims would not run afoul of the Religion Clauses. *Id.* at 948.

With regard to the Free Exercise Clause analysis, the *Bollard* court stated that, "[w]here the church provides no doctrinal or protected-choice based rationale for its alleged actions . . . a balancing of interests strongly favors application of the statute." *Id.* at 948. In so concluding, the court noted that "applying any laws to religious institutions necessarily interferes with the unfettered autonomy churches would otherwise enjoy," however, "such generalized and diffuse concern for church autonomy, without more, does not exempt them from the operation of secular laws. **Otherwise, churches would be free from all of the secular legal obligations that currently and routinely apply to them.**" *Id.* (emphasis added). As was the case in *Bollard*, MCWE and Cerullo have failed to articulate any doctrinal or theological rationale for the fraudulent acts perpetrated upon Petitioner.[4] Instead, they have relied upon, and the Court of Appeal has accepted, nothing more than "generalized and diffuse" arguments of threatened religious autonomy.

With regard to the Establishment Clause analysis, the *Bollard* court noted that the only issue of contention under the *Lemon* test was whether an excessive government entanglement with religion would be fostered by enforcement of plaintiff's Title VII claim. *Bollard*, 196 F.3d

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[4] As was the case with the Jesuits in *Bollard*, it would be incredulous for MCWE and Cerullo to contend fraud constitutes either an accepted religious belief or practice or a legitimate aspect of the clergy selection process.

at 948. The court then commented that "[e]ntanglement has both substantive and procedural dimensions." In this regard, other courts have observed that entanglement may arise "where the Government is placed in a position of choosing among 'competing religious visions,' " or "in situations where a 'protracted legal process pit[s] church and state as adversaries.' " *See Catholic Univ. of Am.*, 83 F.3d at 465. Because, as discussed in analyzing the free exercise issue, neither the freedom of the Jesuits to choose their ministers nor any other specified religious belief or practice was at stake, the *Bollard* court concluded no substantive entanglement existed – the court would not be called upon to resolve issues of doctrine or theology. *Bollard*, 196 F.3d at 948-949. Likewise, the court found no procedural entanglement sufficient to justify foregoing judicial review of the plaintiff's Title VII action, because adjudication of his claims required only a "restricted inquiry" leading a jury to make only "secular judgments" and because the sole remedy of damages that was sought would not require continuing court oversight. *Id.* at 949-950; *see also Minker*, 894 F.2d at 1360.

Lastly, Petitioner calls the Court's attention to *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. Ct. App. 2000), *cert. denied*, 533 U.S. 951, 121 S.Ct. 2594, 150 L.Ed.2d 752 (2001). In *Turner*, a former missionary brought numerous state-law tort and contract claims against the Church of Jesus Christ of Latter-Day Saints, the Corporation of the Bishop of the Church of Jesus Christ of Latter-Day Saints, and the Corporation of the President the Church of Jesus Christ of Latter-Day Saints (collectively "the Church"), arising out of injuries he received in the course of his mission work for the Church in Guatemala. The Church moved for summary judgment on all of the former missionary's claims asserting the First

Amendment as a bar. The court held the former missionary's claims arising out of allegations that the Church's missionary program was inadequate, as well as several claims relating to post-mission activities involving internal policies and procedures of the Church, were barred by the Religion Clauses. *Id.* at 890-896, 898.

However, the *Turner* court sustained the former missionary's claims for defamation based on the Church's communication of questionably accurate information in his medical records to persons other than his immediate family and for false imprisonment and intentional infliction of emotional distress based on the Church's placement of him in the mental health department of a local hospital upon his return from Guatemala. In allowing the former missionary to proceed on these intentional tort causes of action, the *Turner* court found that "[t]he Church does not explain, and we do not perceive, how [these actions] concern[ ] the internal policies of the Church or matters of faith or ecclesiastical doctrine. Nor does the Church explain how resolution of [these] claim[s] would actively involve the government in the Church's religious activities or excessively entangle the government with religion." *Id.* at 896-897.

Petitioner submits the *Drevlow/Bollard/Turner* approach is appropriate in cases in which a ministerial employee asserts claims of tortious conduct by a religious organization when that conduct is not founded in church doctrine or theology. Drawing from these cases, Petitioner posits that a religious organization which seeks refuge in the Religion Clauses to escape civil liability may not rely upon "generalized and diffuse" assertions that religious freedoms will be affected by otherwise neutral state laws. To the contrary, the religious organization must articulate how a specific religious belief or practice would be implicated by judicial resolution of the dispute.

This approach squares with the Free Exercise Clause analysis because it ensures that a church's religious belief or practice is actually at issue. Without a religious belief or practice impacted by application of the law, the religious organization's plea of religious freedom is minimal relative to the state's interest in enforcing an otherwise neutral law, and the balance between church and state weighs in favor of applying the law. As for the Establishment Clause analysis, absent a specified religious belief or practice that is implicated, the court is not called upon to choose between "competing religious visions," and so no substantive entanglement exists. Moreover, as it is without dispute that religious organizations are involved in protracted civil litigation every day, absent substantive entanglement, the procedural entanglement argument that involving a religious organization in protracted litigation constitutes an Establishment Clause violation is alone not persuasive.

Based on the foregoing, and the fact that neither MCWE, Cerullo nor the Court of Appeal has articulated any specific religious belief or practice implicated by prosecuting Petitioner's claims, Petitioner submits that judicial review of his fraud/deceit causes of action would require only secular inquiry and, thus, would not run afoul of the Religion Clauses of the United States Constitution.

C. This Court's "neutral principles of law" approach to resolving intrachurch disputes without offending the First Amendment logically extends to tort claims by a clergy member arising from conduct of a religious actor that does not implicate ecclesiastical concerns and should be applied to permit adjudication of Petitioner's state-law tort claims.

The First Amendment "embraces two concepts – freedom to believe and freedom to act. The first is absolute

but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U.S. 296, 303-304, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). This Court in recent years has redirected its religion jurisprudence under the First Amendment toward a concept of "neutrality" – i.e., equal treatment of religion and non-religion. *See, e.g., Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (pertaining to the Free Exercise Clause); *Agostini v. Felton*, 521 U.S. 203, 117 S.Ct. 1997, 138 L.Ed.2d 39 (1997) (pertaining to the Establishment Clause); *see also* Idleman, *Tort Liability, Religious Entities, and the Decline of Constitutional Protection*, 75 Ind. L.J. 219, 252-257 (Winter 2000). Moreover, in the context of intrachurch property disputes, the "neutral principles of law" approach has been routinely applied to resolve disputes which do not involve the courts in matters of ecclesiastical cognizance. *See, e.g., Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775 (1979); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). As explained in *Jones v. Wolf*, "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees or purchase goods." 443 U.S. at 606, 99 S.Ct. at 3027, 61 L.Ed.2d 775.

Drawing from this jurisprudence, Petitioner submits that, in the context of a state-law tort claim by a minister against a religious organization arising out of conduct without basis in religious belief or practice, application of the neutral principles of the state's tort laws is constitutionally appropriate. "The right of free exercise does not

relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Smith*, 494 U.S. at 879, 110 S.Ct. at 1600. This rule clearly applies to "generally applicable criminal law." *Id.* at 884, 110 S.Ct. at 1603. Consequently, it also logically applies to intentional torts.[5] Religious conduct intended or certain to cause harm need not be tolerated under the First Amendment. *See Cantwell*, 310 U.S. at 308, 60 S.Ct. at 905. In this regard, Chief Justice William Rehnquist has observed:

> There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese v. Milivojevich*. But this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes. Thus, *Serbian Eastern Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. 426 U.S.,

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[5] Under the facts of this case, this Court is called upon only to assess the First Amendment concerns of enforcing intentional tort laws. Thus, the Court need not speak to claims that require subjecting a religious actor's conduct to an "objective" standard of care – e.g., reasonableness or reasonable prudence – and, as such, may be more likely to thrust the judiciary into nonjusticiable questions of religious belief. *See, e.g.*, Idleman, 75 Ind. L.J. at 231-238 & collection of cases in notes 35-51.

> at 709-710, 96 S.Ct., at 2380-2381. **Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged.** As the Court stated in another context: "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." *Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940).

General Council on Finance & Admin. of the United Methodist Church v. Superior Court, 439 U.S. 1355, 1372-1373, 99 S.Ct. 35, 38, 58 L.Ed.2d 63 (1978) (emphasis added).

Application of neutral principles of state tort law conforms to the developing trend in cases in which non-ministerial plaintiffs are asserting tort claims against religious organizations which require no inquiry into church policy or practice. *See, e.g., Malicki v. Doe*, No. SC01-179, 2002 WL 390021 (Fla. March 14, 2002); *Gibson v. Brewer*, 952 S.W.2d 239, 248 (Mo. 1997) (holding that intentional tort causes of action are sustainable under neutral principles of law approach); *Konkle v. Henson*, 672 N.E.2d 450, 455-456 (Ind. App. 1996); *Moses v. Diocese of Colorado*, 863 P.2d 310, 320 (Colo. 1993), *cert. denied*, 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994). That the plaintiff in this case is a minister should not detract from the viability of applying neutral principles of a state's law of torts. Instead, where liability is imposed equally, for religious institutions and parties, as well as for others, and where the basis for such liability may be determined without examination into religious belief or practice, the First Amendment is no bar to adjudication of such claims, regardless of the identity of the claimant.

Petitioner's claims of fraud and deceit merely require secular inquiry into whether (a) the promises made by Cerullo and MCWE were false when made; (b) Cerullo and MCWE knew those promises were false when made; (c) Cerullo and MCWE made false promises to Petitioner to induce his reliance thereon; (d) Petitioner justifiably relied upon the false promises; and (e) Petitioner suffered damages. *See Lazar*, 12 Cal.4th at 638. Consequently, Petitioner's claims of fraud and deceit may be adjudicated applying neutral principles of California's tort law to secular facts, thereby avoiding infringement upon any area of religious freedom protected by the Religion Clauses of the First Amendment to the United States Constitution.

CONCLUSION

The California Court of Appeal refused to adjudicate Petitioner's claims of common-law and statutory fraud and deceit, relying upon a nebulous formulation of First Amendment religious freedom principles. Petitioner submits the Court of Appeal erred in applying the ministerial exception to his state-law tort claims and in concluding the First Amendment otherwise was implicated by Petitioner's claims without articulation of any specific and sincerely-held religious belief or practice at risk of being infringed by enforcement of these claims.

Accordingly, Petitioner requests that this Court grant his Petition for a Writ of Certiorari to review the Court of Appeal's decision for the following reasons: (1) this Court has yet to expressly address the ministerial exception as a proper application of its religious autonomy jurisprudence, and, while this case presents a proper factual context for this Court to so express itself, it also presents

the Court with the proper context in which to appropriately circumscribe the scope of application of the ministerial exception to those cases of church-minister employment disputes for which the doctrine was formulated, and of which this case is not one; (2) this Court has not yet specifically addressed whether a minister may pursue state-law tort claims against a church or religious organization arising out of conduct unrelated to religious belief or practice, but, nonetheless, the Court of Appeal has misapplied the religious freedom principles of the First Amendment in the context of this state-law tort claim in contravention of the decisions of various state and federal courts, as well as the general religious freedom principles of this Court's First Amendment jurisprudence; and (3) because this Court has not yet specifically addressed whether a minister may pursue state-law tort claims against a church or religious organization arising out of conduct unrelated to religious belief or practice, this case presents a proper context for this Court to establish a proper constitutional framework for analyzing such a claim, which Petitioner submits is an extension of this Court's "neutral principles of law" approach.

The question presented by this Petition, along with the aforestated underlying issues, pose matters of first impression for this Court. Moreover, the Court of Appeal's decision in this case directly conflicts with existing state and federal court decisions in the same sphere, as well as with the established First Amendment religious freedom principles espoused in this Court's jurisprudence. Consequently, the matters raised in this Petition for a Writ of Certiorari are significant and compelling and

warrant this Court's exercise of its discretion to issue the writ sought.

Respectfully submitted,

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MORRIS CERULLO WORLD EVANGELISM et al., Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent; JOHN PAUL WARREN, Real Party in Interest.	D038029 (Super. Ct. No. GIC748526) (Filed Dec. 12, 2001)

PROCEEDINGS in mandate. Linda B. Quinn, Judge. Petition granted, with directions.

Plaintiff and real party in interest John Paul Warren is a Christian minister who was associated for several years with Morris Cerullo and his evangelical ministry, Morris Cerullo World Evangelism (World Evangelism), a non-profit corporation that has tax-exempt status with the Internal Revenue Service. (26 U.S.C.A § 501, subd. (c)(3).) Warren has sued Cerullo individually and in his capacity as president of defendant World Evangelism, Warren's former employer, for damages for fraud and deceit. In addition, Warren makes the same fraud and deceit claims against World Evangelism, along with causes of action for violation of Labor Code section 970 (misrepresentations

regarding relocation for employment), intentional interference with economic relationship, misappropriation of trade secrets, and partnership dissolution.

This writ proceeding has been brought by Cerullo and World Evangelism to challenge the trial court's ruling denying their motion for summary adjudication of issues on certain causes of action. (Code Civ. Proc.,[1] §§ 437c, 1085.) Resolving the issues presented requires us to discuss the interplay of tort theories in the employment context with constitutional First Amendment protections for the free exercise of religion and against its establishment by civil government. We are also required to consider the extent to which nonwork-related rights and duties may exist within a working relationship in the religious context.

As we will explain, we grant Cerullo's and World Evangelism's petition for writ of mandate, directing the trial court to enter a new order granting the summary adjudication motion as to the causes of action for fraud and deceit and violation of Labor Code section 970. However, except for those legal issues that we necessarily have resolved as law of the case, we do not reach the issues raised by certain causes of action left pending by the trial court's order, concerning Warren's newly added partnership allegations and his claims of intentional interference with an economic relationship. (*Kowis v. Howard* (1992) 3 Cal.4th 888.)[2]

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[1] All statutory references are to this code unless otherwise stated.

[2] No challenge has been made to the portion of the ruling that summarily adjudicates against Warren his trade secret claims based on World Evangelism's acquisition of certain

SUMMARY

These background facts are taken from Warren's complaint and the respective separate statements filed in connection with the summary adjudication motion. In 1995, real party in interest Warren was an established evangelical pastor of many years' standing, who led his own Northern California congregation in the Assemblies of God denomination, and who operated his own international ministry, Voice of the Nations.

Cerullo is an ordained minister who is the founder, president, chief executive officer, and chairman of the board of directors of World Evangelism. World Evangelism is a Christian crusade that travels all over the world and raises money as a nonprofit corporation to pursue its outreach. Its beliefs are similar to those of the Assemblies of God denomination, in which Cerullo was ordained. It is based in San Diego and is exempt from federal income tax as an organization that operates for religious purposes. World Evangelism has many divisions, including Mission to All the World (MTAW), in which Warren was particularly involved.

In May 1995, Cerullo asked Warren to speak at a World Evangelism conference in India. Between that time and March 1998, Warren preached to and traveled with World Evangelism meetings and conferences. Beginning in 1997 through 1998, Cerullo asked Warren and his wife to move to San Diego and assist him full time in the World Evangelism enterprises. Warren alleges that these

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donor lists formerly controlled by Warren, and it is not affected by this writ proceeding.

requests included promises to him that Warren would become a partner in World Evangelism, and was not an employee. Cerullo told Warren he needed a successor and Warren would fill this role. Cerullo told Warren that he would be the second in command and would have lifetime employment at World Evangelism. Cerullo anticipated there would be a ministry merger between World Evangelism and Warren's personal ministry, Voice of the Nations. Cerullo told the Warrens that Reverend Warren would speak at World Evangelism crusades, would be on television, and would have his own church, if he moved to San Diego from Northern California.

At Cerullo's request, Warren gave him his confidential Voice of the Nations ministry donor lists that he had compiled. Along with many other World Evangelism donors, Warren paid Cerullo $1,500 in return for a promise of a satellite dish to allow access to World Evangelism's Global Prayer Satellite Network. World Evangelism calls its donors "partners."

Between December 1997 and June 1998, Warren and Cerullo continued to discuss the plans for Warren to move to San Diego to pursue the partnership in World Evangelism. Cerullo unilaterally moved ahead with the plan in March 1998 by announcing to Warren's then-current congregation that Warren was leaving Northern California to move to San Diego. However, when Warren arrived here, he found he was not second in command, but instead was only one of several senior executive vice presidents and associate ministers of World Evangelism, who headed its different divisions. For one and one-half years, Warren performed many duties for Mission to All the World in particular, arranging administrative details

for its international crusades and participating in them as a preacher. Warren never received the satellite dish for which he had made a specific contribution. He received a salary of approximately $130,000 yearly.

Although Warren handled the administrative details of several World Evangelism conferences and crusades, it was evidently not to Cerullo's satisfaction. In April 1999, Cerullo dismissed him, then withdrew the dismissal, but again dismissed Warren in June 1999 and October 1999. Warren announced at a ministry event that he had been released from Cerullo and would be continuing to perform his ministry worldwide.

Warren then filed this action alleging fraud and deceit against both Cerullo and World Evangelism, alleging that Cerullo used unethical and fraudulent fund raising techniques and had made promises without intention to perform about the partnership offered to Warren on the condition he relocate to San Diego and give up his prior ministry. Warren also alleged World Evangelism had violated Labor Code section 970 by making false representations to induce Warren to relocate, concerning the type of work he would be performing and for what length of time, and about the compensation due for the work.[3]

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[3] Labor Code section 970 provides in pertinent part: "No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State . . . for the purpose of working in any branch of labor, through or by means of knowingly false representations . . . ," concerning certain enumerated circumstances of employment, such as the character or duration of the promised work, etc.

In addition to the first two causes of action against World Evangelism, Warren sought damages for intentional interference with economic relationship, alleging that in the year 2000, after Warren cut his ties with Cerullo, World Evangelism attempted to interfere with Warren's efforts to obtain alternative employment with the denomination in which he was ordained, Assemblies of God. Trade secret claims were also alleged based on the donor lists.

Cerullo and World Evangelism answered the complaint and filed a cross-complaint (not at issue here). After participating in extensive discovery, they brought a motion for summary adjudication of issues based on the theory that the complaint presented only an internal religious employment dispute between minister and church which had no place in the civil courts, because of First Amendment protections. Another defense raised was litigation privilege as it applied to the cause of action for intentional interference with economic advantage (Civ.Code, § 47, subds.(b), (c)). With respect to the fraud action against Cerullo individually, the motion argued that his actions were taken only as an agent for a disclosed principal, World Evangelism, and thus no individual liability existed. The motion attacked the complaint as a whole and also each cause of action individually.

In opposition to the motion, Warren argued that he entered into a partnership with Cerullo and World Evangelism in March 1998, when he moved to Southern California. Warren's position was that he was not hired as a minister of the gospel, but rather functioned primarily in a secular position as administrator of the Mission to All the World campaign. He contends that both Cerullo

individually and his organization, World Evangelism, entered into the lifetime partnership agreement, which was both oral and written.

After issuing a telephonic ruling and hearing oral argument, the trial court granted the motion in part and denied it in part. It was denied on the fraud/deceit and relocation claim under the Labor Code, granted as to the trade secret claims, and continued as to the intentional interference with economic advantage claim. Subsequently, the trial court granted a motion to amend to add a sixth cause of action, for dissolution of partnership and an accounting. This petition followed.

DISCUSSION

I

PROCEDURAL STATUS OF ACTION

The motion for summary adjudication or judgment by Cerullo and World Evangelism sought orders in their favor on the entire complaint, as well as each cause of action specifically. In its order, the trial court denied summary adjudication as to the first and second causes of action, on the basis that triable issues of material fact existed as to whether the claims arose out of or related to an employment dispute, as opposed to a partnership that Warren purportedly entered into with Cerullo and World Evangelism, as well as whether Cerullo entered into such a partnership or knowingly made false representations without an intention to perform. A continuance was granted as to the third cause of action for intentional interference with economic relationship for further discovery. Summary adjudication on the trade secret causes

of action (nos. 4 and 5) was granted, and Warren has not challenged that ruling.

Three days after this telephonic ruling was confirmed, the trial court granted leave to amend the complaint to add a separate sixth cause of action for dissolution of partnership and an accounting. Accordingly, the summary adjudication motion could not have addressed that claim, although Warren had requested judicial notice of the pending motion to amend during the summary judgment proceedings. Subsequently, this court imposed a stay in connection with the granting of the order to show cause on the petition, staying the trial court hearing on the summary adjudication motion regarding the interference with economic advantage claim and the scheduled trial date.

Therefore, although the summary adjudication or summary judgment motion attempted to address all existing causes of action, the actual ruling that we review finally disposed only of the trade secret claims, which are not at issue here. The petition for writ of mandate specifically addresses only the first cause of action for fraud and deceit and the second cause of action for misrepresentations in connection with relocation under Labor Code section 970. There have been no Superior Court rulings yet on the remaining claims for intentional interference with economic advantage or the dissolution of partnership request, and the petition does not seek orders regarding those particular claims. Our disposition of the petition will allow the Superior Court to conduct further proceedings as appropriate on both pending causes of action.

However, the trial court and parties must be advised that such further proceedings will be subject to the doctrine of law of the case, which clearly applies to pretrial writ proceedings. Where, as here, an appellate court has issued an alternative writ, received full briefs in the matter, offered an opportunity for oral argument, and decided the cause by a written opinion, "[t]he resultant holding establishes law of the case upon a later appeal from the final judgment." (*Kowis v. Howard*, *supra*, 3 Cal.4th at p. 894.) In general, this doctrine does not give any conclusive effect to determinations of questions of fact, except where the sufficiency of the evidence as a matter of law has been determined. Rather, the doctrine of the law of the case applies only to the principles of law laid down by the court, as applicable to any retrial on the facts. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 901, pp. 936-937.)

It should also be noted that although the general rule is that law of the case will not apply to points that were not decided by the appeals court, there is an important exception: "Where the particular point was essential to the decision, and the appellate judgment could not have been rendered without its determination, a necessary conclusion in support of the judgment is that it was determined. With respect to such a point, the appellate decision is law of the case even though the point was not raised by counsel or expressly mentioned." (9 Witkin, Cal. Procedure, *supra*, Appeal, § 913, pp. 948-950.) Even though our review here is limited to the order on the first and second causes of action, the legal conclusions we draw on essential points about those two will provide

valuable guidance to the trial court in the future proceedings on the two reserved causes of action. With this in mind, we proceed to examine the legal issues actually presented, on the fraud/deceit and the relocation misrepresentation claims in this particular factual context. (Lab.Code, § 970.)

II

INTERSECTION OF CONSTITUTIONAL PRINCIPLES AND CIVIL DISPUTE RESOLUTION

A

First Amendment

The First Amendment to the United States Constitution provides with respect to religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . " As well explained in *Schmoll v. Chapman University* (1999) 70 Cal.App.4th 1434 (*Schmoll*), based on these principles, the courts have developed a general rule barring judicial review of employment disputes between religious organizations and their clergy employees (known as the ministerial exception). The reason for the rule is stated in case law such as *Rayburn v. General Conference of Seventh-Day Adventists* (4th Cir. 1985) 772 F.2d 1164, 1168 (*Rayburn*): "Any attempt by government to restrict a church's free choice of its leaders . . . constitutes a burden on the church's free exercise rights." The importance of religious leadership decisions, and their incompatibility with civil secular adjudication of associated employment disputes, were explained in the leading case of *McClure v. Salvation Army* (5th Cir. 1972) 460 F.2d 553: "The relationship

between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. . . . Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these include the determination of a minister's salary, his [or her] place of assignment, and the duty he [or she] is to perform in the furtherance of the religious mission of the church." (*Id.* at pp. 558-559.)

This court further explained the doctrine in *Higgins v. Maher* (1989) 210 Cal.App.3d 1168 (*Higgins*), an action by a priest for wrongful termination and other types of theories against his bishop and the diocese that had employed him:

> "[S]ecular courts will not attempt to right wrongs related to the hiring, firing, discipline or administration of clergy. Implicit in this statement of the rule is the acknowledgment that such wrongs may exist, that they may be severe, and that the administration of the church itself may be inadequate to provide a remedy. [But][t]he preservation of the free exercise of religion is deemed so important a principle as to overshadow the inequities which may result from its liberal application. In our society, jealous as it is of separation of church and state, one who enters the clergy forfeits the protection of the civil authorities in terms of job rights." (*Id.* at p. 1175.)

Even if a claim by a clergy member against a religious institution is framed in terms other than wrongful termination, such as breach of contract or public policy,

invasion of privacy, defamation or infliction of emotional distress, the same constitutional considerations will apply to the religious or doctrinal aspects of the interpersonal dispute. (*Higgins, supra,* 210 Cal.App.3d at pp. 1175-1176; *Schmoll, supra,* 70 Cal.App.4th at pp. 1442-1445.) Both clauses of the First Amendment, the free exercise clause and the establishment clause, must be considered in determining whether a plaintiff's claim is subject to judicial review. The threshold issue is whether the state's interest in addressing such a dispute is of "sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 214, as quoted in *Conley v. Roman Catholic Archbishop of San Francisco* (2000) 85 Cal.App.4th 1126, 1132 (*Conley*).) Stated another way, a church/state contest is decided by " 'balancing . . . the burden on free exercise against the "impediment to . . . [the state's] objectives that would flow from recognizing the claimed . . . exemption." [Citation.]' " (*Schmoll, supra,* 70 Cal.App.4th at p. 1442, citing *Rayburn, supra,* 772 F.2d at p. 1168.)

Further, in evaluating the state's interest in giving a forum to a particular dispute, it must be determined whether the resolution of the dispute, as requested, would foster " 'an excessive government entanglement with religion,' " in violation of the establishment clause. (*Lemon v. Kurtzman* (1971) 403 U.S. 602, 613.)

B

Areas Exempt from Absolute First Amendment Protections

Warren contends his causes of action fall outside the parameters of these well-established rules as they have evolved within the context of employment disputes between clergy members and religious hierarchies. He alleges, first, the claims at issue here, fraud/deceit and Labor Code section 970, are not precisely employment disputes, but rather are alternative types of tort theories, based on partnership facts that are generally pled (and have been specifically added by recent amendment). He chiefly contends he was acting in Cerullo's employ in a purely secular capacity, as an administrator of a traveling show, which should remove him from ecclesiastical doctrinal limitations on pursuing his case.

In contrast, Cerullo and World Evangelism contend the religion clauses of the First Amendment bar judicial review of disputes between ministers and churches concerning choice of leaders and perception of ministerial needs, no matter what label is assigned to the claim. Further, they argue, it makes no difference "whether the ministerial relationship is a traditional employer/employee relationship, or some other type such as partnership, independent contractor, volunteer, trainee, novice or shareholder." We will confine our discussion to the facts actually before us, involving the overall partnership allegations made to support the fraud and deceit claims, as well as the relocation claims. As we have already emphasized, however, it has not yet been determined in the trial court or here the extent to which there may be

any state civil jurisdiction over the two remaining causes of action.

It is well established that the First Amendment does not immunize the church from all temporal claims made against it. (*Minker v. Baltimore Annual Conference of United Methodist Church* (DC Cir. 1990) 894 F.2d 1354, 1361 (*Minker*); *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1086.) In support of Warren's arguments that these are nonreligious claims, he relies on authority such as *Higgins v. Maher, supra,* 210 Cal.App.3d 1168, in which this court acknowledged that churches and their congregations and hierarchy "are as amenable as other societal entities to rules governing property rights, torts and criminal conduct." (*Id.* at p. 1170.) Even if some ecclesiastical matters are incidentally involved, the courts will assert jurisdiction over controversies within religious bodies, as long as civil or property rights are at stake. (*Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55 (*Providence Baptist Church*) [court considered whether a church had followed its own bylaws and internal procedures in discharging a pastor].) For example, where real property of the organization and funds collected are involved, internal disputes about them may be cognizable in the civil courts. (*Id.* at pp. 60-61; see *Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, 292.) In such cases, the secular courts need not resolve ecclesiastical disputes over discipline, faith, church governments or doctrine, which are areas in which they will not tread. (*Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 713-714.)

Other secular values may also be vindicated even where First Amendment considerations are raised. For

example, in *Conley, supra,* 85 Cal.App.4th 1126, the court of appeal ruled that a complaint by a member of the clergy seeking relief against his superiors for defamation and infliction of emotional distress posed substantive issues that were properly before the civil courts. The plaintiff clergy person claimed his superiors' conduct amounted to imposing sanctions for making reports of suspected child abuse, sanctions which the statute forbade. (Pen.Code, § 11166.) The court held such allegations were entitled to judicial review, because the balance weighed in favor of the state's interest in protecting children, and privileged reporting must not be penalized. (*Conley, supra,* 85 Cal.App.4th at p. 1132.)

In *Minker, supra,* 894 F.2d 1354, the federal appellate court granted a motion to dismiss a clergy person's claims against his church employers that were based on federal age discrimination legislation and church doctrinal manuals, by finding these were protected areas. However, the court allowed Minker's oral contract claim to survive the motion to dismiss, on the rationale that:

> "As a theoretical matter, the issue of breach of contract can be adduced by a fairly direct inquiry into whether appellant's superintendent promised him a more suitable congregation, whether appellant gave consideration in exchange for that promise, and whether such congregations became available but were not offered to Pastor Minker. Similarly, Minker's injury can be remedied without court oversight. Money damages alone would suffice since Minker already has a new pastorship. Maintaining a suit, by itself, will not necessarily create an excessive entanglement. Furthermore, as the

remedy would be limited to the award of money damages, we see no potential for distortion of church appointment decisions from requiring that the Church not make empty, misleading promises to its clergy. [¶] *It could turn out that in attempting to prove his case, appellant will be forced to inquire into matters of ecclesiastical policy even as to his contract claim. Of course, in that situation, a court may grant summary judgment on the ground that appellant has not proved his case and pursuing the matter further would create an excessive entanglement with religion. On the other hand, it may turn out that the potentially mischievous aspects of Minker's claim are not contested by the Church or are subject to entirely neutral methods of proof.* The speculative nature of our discussion here demonstrates why it is premature to foreclose appellant's contract claim. Once evidence is offered, the district court will be in a position to control the case so as to protect against any impermissible entanglements. Thus, while the first amendment forecloses any inquiry into the Church's assessment of Minker's suitability for a pastorship, even for the purpose of showing it to be pretextual, it does not prevent the district court from determining whether the contract alleged by Minker in fact exists. [Citation.]" (*Id.* at pp. 1360-1361 (emphasis added).)

III

ANALYSIS

To analyze Warren's arguments in light of all the above authority, we examine the summary adjudication papers to determine if there is a sufficient state interest in adjudicating this particular dispute that will "override

the interest claiming protection under the Free Exercise Clause." (*Wisconsin v. Yoder, supra,* 406 U.S. at p. 214, as quoted in *Conley, supra,* 85 Cal.App.4th at p. 1132.) If resolution of the dispute, as requested, would foster "'an excessive government entanglement with religion,'" in violation of the establishment clause, then the civil courts should refrain from inquiring into the merits of the dispute. For example, where addressing the merits of the dispute would implicate theological or doctrinal issues, the civil courts will not cross that threshold. (*Schmoll, supra,* 70 Cal.App.4th at p. 1442, fn. 8.)

However, to the extent a primarily secular dispute involving property rights or torts is presented, with only incidental involvement of any ecclesiastical matters, the courts have a duty to adjudicate such matters as are properly brought before them. (*Providence Baptist Church, supra,* 40 Cal.2d 55.) This inquiry must address both the nature of the activities by the defendants that have allegedly infringed upon the plaintiff's rights, and the nature of the interests for which the plaintiff seeks vindication.

A

Nature of Defendant/Petitioner Cerullo's Activities as Religious or Secular

In his complaint, Warren consistently describes the activities by Cerullo and World Evangelism in which he was invited to participate as predominantly religious in nature. He describes his concern about leaving his ministries in Northern California, and outlines the representations made by Cerullo to induce him to relocate as

pertaining to Warren's proposed place in the leadership of the World Evangelism ministry. These included opportunities to speak at World Evangelism crusades, an opportunity to obtain a church for Warren to head, television exposure on religious programming, and participation in the global prayer satellite network. All these items are well within the scope of church leadership activity within modern organized religion. However, they are also alternatively described in terms of the World Evangelism corporate flowchart showing the leadership structure of the organization. Warren also makes allegations about Cerullo's unethical and fraudulent fund raising techniques, which he describes as integrity issues, also presumably within the context of leadership issues of the World Evangelism organization.

In contrast, in opposition to summary adjudication and to the writ petition as filed in this court, Warren recharacterizes his participation in these activities as essentially secular in nature, resembling administrative activity in any large organization that requires technical skills. Going beyond his pleadings, Warren now takes the position that World Evangelism is neither a church nor affiliated with any religious institution:

> "Instead, it is a traveling show that takes on the appearance of a revival movement. Mr. Warren was hired as the events coordinator for this show. Although Mr. Warren is an ordained minister with the Assemblies of God and has taken the stage on occasion at MCWE events, his primary job responsibilities with MCWE were to supervise and coordinate the logistics of staging MCWE Mission to All the World events in various regions of the world."

In support of his arguments, Warren cites deposition testimony by Cerullo that it was expected that Warren was to handle the nuts and bolts and logistics of the ministry activity around the world, to relieve Cerullo of that burden. Warren appears to request a finding by this court that World Evangelism is not a "church" or "religious institution" for purposes of applying the case law that would bar judicial review of employment-related claims in the religious context. He relies on criteria provided by the Internal Revenue Service for determining whether a religious institution is entitled to tax-exempt status. (See, for citation purposes, *Spiritual Outreach Soc. v. C.I.R.* (8th Cir. 1991) 927 F.2d 335, 338.) The purpose of this argument is to demonstrate that there are triable issues of fact as to whether Warren was acting as a "minister" during his association with World Evangelism, as well as whether World Evangelism constitutes a "church" or "religiously affiliated organization" as those terms are used in this specific context.

It is highly questionable whether this court has jurisdiction to review for these purposes whether World Evangelism is entitled to church status, when the IRS has already allowed it such status for tax purposes. (26 U.S.C.A. § 501, subd. (c)(3); 26 U.S.C.A. § 7801 et seq.) Even if we were inclined to inquire into this area, Warren has given us no persuasive reason to do so. He has failed to demonstrate that there are any triable material issues of fact as to whether the individual defendant Cerullo or the corporate defendant World Evangelism actually have the necessary character as religious officials or entities, such as would require the civil courts to refrain from inquiring into their employment decisions. For example,

it is not dispositive that most or all members of World Evangelism already belong to other churches, or that World Evangelism is not itself a denomination.

More importantly, Warren has not shown his duties were outside the scope of the religious activities of the organization. Although the record demonstrates that there are certain secular aspects to the fund raising and operational components of the World Evangelism organization, when we read the complaint together with the summary adjudication papers, we see that this entire dispute is steeped within the atmosphere and language of Christian evangelism, and the internal leadership disputes pled are inseparable from the doctrinal and hierarchical components of that form of religious beliefs. Taking the papers as we find them, we are unable to distinguish any meaningful separate secular character of the defendants' operations that would require us to treat portions of these defendants' activities separately from the religious aspects of the conduct that adversely affected Warren.

Moreover, to the extent that Warren is attempting to act as a whistleblower or class representative who is seeking to redress wrongful conduct in the area of fund raising or unethical behavior, his complaint as currently pled is so individualized in nature that he has not provided facts or law that would enable him to pursue such relief. Rather, the gist of the complaint, including the partnership allegations, is that Warren was unfairly treated in his professional relationship with the defendants, totally, if unfortunately, within the context of their common beliefs and goals as Christian ministers. Accordingly, we must decline to make any finding that for the

purposes of Warren's complaint, Cerullo and World Evangelism may not be treated as religious figures whose clergy-related employment decisions are within a protected sphere.

B

Nature of Real Party Warren's First and Second Causes of Action

Turning from the defendants' characteristics to those of the plaintiff, Warren's claims against Cerullo as an individual for fraud and deceit are essentially the same as his claims against World Evangelism. Both are based upon the partnership language that he was more than a mere employee who was induced to relocate to perform certain specified duties. Instead, he characterizes the promises that were made to him regarding his future status (as a partner, successor, second in command, and crusade speaker with television exposure) as sufficiently secular to bind both defendants to civil liability for damages for his relocation expenses and also for the use of his donor list However, although Warren seeks damages of $500,000 for the relocation and termination of employment, he does not specify the particular manner in which he was damaged. For example, although his opposition to the petition argues that his alleged lifetime partnership contract was breached, it is not made clear what portion of the World Evangelism corporate enterprises were allegedly to be subject to the control of the alleged partnership. Moreover, World Evangelism calls all its donors "partners," and Warren has not fully explained how that term has special meaning here.

With respect to Warren's civil cause of action under Labor Code section 970, he seeks double damages as measured by the $1,000 fine that is prescribed for violation of the section. (Lab.Code, §§ 971, 972.) The misrepresentations alleged were the persuasion to him to relocate for the purpose of working in the World Evangelism enterprises, and the circumstances of employment as promised.

In his opposition to the summary adjudication motion, Warren contended he was not hired for religious duties as a minister of the gospel, but actually functioned primarily in a secular position as administrator of the Mission to All the World campaign. In the opposition to Cerullo's petition filed in this court, Warren contends his claims arose out of conduct that occurred prior to and throughout his involvement with World Evangelism, and that his economic relationships were interfered with after his involvement with the ministry terminated. He claims he was wrongfully deprived of the advantages of his contract of partnership, independent of any employment decision by World Evangelism. In his view, the religious aspect of the church-minister employment relationship that warrants heightened constitutional protection is not present in this case, due to the kind of functions he performed and due to the timing of the tortious acts.

In reviewing this summary judgment ruling, our task is to identify the issues framed by the pleadings and determine the efficacy of the moving parties' showing to negate the opponent's claims and justify judgment in their favor. We must then examine on a de novo basis whether the opposition demonstrates the existence of any triable issues of material fact. (*Donchin v. Guerrero* (1995)

34 Cal.App.4th 1832, 1838.) Here, that exercise involves the proper characterization of the nature of these allegations as representing predominantly secular relationships or those predominantly based in religious values or belief structures. We must inquire whether ecclesiastical concerns are only "incidentally" involved. (*Providence Baptist Church, supra,* 40 Cal.2d at pp. 60-61.)

In an effort to obtain guidance for this task in this somewhat nebulous factual context, we have turned to authority in a comparable but procedural context, dealing with the standard of review of mixed questions of fact and law. The Supreme Court in *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791 discussed that problem as follows, quoting *People v. Louis* (1986) 42 Cal.3d 969, 986-987: One must look to the nature of the inquiry that is required " 'to decide "whether the rule of law as applied to the established facts is or is not violated." [Citation.] If application of the rule of law to the facts requires an inquiry that is "essentially factual," [citation] – one that is founded *"on the application of the fact-finding tribunal's experience with the mainsprings of human conduct,"* [citation] – the concerns of judicial administration will favor the [trial] court, and the [trial] court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us *to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles,* then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo.' " (*Id.* at pp. 800-801, emphasis added, citing

McGhan Medical Corp. v. Superior Court (1992) 11 Cal.App.4th 804, 809-810.)

Here, both approaches discussed in *Ghirardo, supra,* 8 Cal.4th 791 are of value. Religious expression is historically one of the most basic of the mainsprings of human conduct, and is integral to this entire dispute. But by the same token, the constitutional values expressed in the First Amendment are legal concepts to be considered in the mix of fact and law, and this court cannot avoid exercising its judgment about the values which inform the applicable legal principles in the context of this dispute. To apply both of these contrasting factors, we analyze the record in these writ proceedings to determine the dominant character of the facts as pled and the relief as requested.

This record as a whole demonstrates an inescapable religious character of this dispute that is inextricably tied up with the spiritual beliefs of the participants. Although Warren has alleged that he performed duties that were not strictly religious in nature, the overall purpose of the administrative duties that he undisputedly performed was to present and promote a particular religious worldview, in common with other participants in the World Evangelism operation. None of his duties as alleged can strictly be characterized as purely secular in nature, because even if technical or operational in character, they took place in the context of religious programming and religious fund raising. Also, it is not disputed that on occasion, Warren took part in preaching spiritual messages during portions of the "traveling shows" or religious programming that he assisted in presenting and promoting. There is no need for this court to review the

proffered 30 videotapes of such activity to establish this point. Accordingly, Warren has failed to show that the alleged partnership that he was offered was dominantly secular in nature, or that the damages that he alleged were separate from those incurred in connection with his employment status as a religious figure. As such, the civil courts must refrain from crossing the threshold of this essentially internal matter of a religious body and its personnel operations, due to the protections of the free exercise clause.

Similarly, with respect to the alleged misrepresentations made to induce Warren to relocate (Lab.Code, § 970), the record discloses that they all occurred within the ambit of his activities as a religious figure, in company with those with congenial beliefs, and in the context of advancing his career, together with the advancement of the faith that both professed. It is true that in some cases, promissory fraud can be pled in the context of fraudulent inducement of an employment contract. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 640-643, 648-649.) In this case, the facts shown, together with Warren's pleading of Labor Code section 970, place this claim firmly within the employment context. However, he has not shown that the nature of the employment alleged was other than wholly religious in nature. Unlike in the case of *Minker, supra,* 894 F.2d at pp. 1360-1361, we may draw this conclusion on an undisputed record, not merely on the pleadings.

Moreover, with respect to the fraud/deceit and relocation causes of action, we believe that sorting out the secular and religiously-based reasons for the respective parties' conduct, and whether it is actionable, would amount to " 'an excessive government entanglement with

religion,' " in violation of the establishment clause. By reaching these conclusions, we do not in any way mean to minimize our concerns with the serious allegations raised about fraudulent and deceptive fundraising and use of donations. Nevertheless, the manner in which this complaint is framed and the individualized nature of these allegations and proof preclude our inquiry into those matters at this time. In sum on this record, the trial court's order was unjustified and a different order must be entered according to the views set forth in this opinion.

DISPOSITION

The stay is dissolved and the petition for writ of mandate is granted as follows: The trial court is directed to vacate its order denying summary adjudication of issues as to the first and second causes of action, and to enter a new order granting the motion as to those claims, as well as the trade secret causes of action as previously ordered. The new order should also reflect that further proceedings will take place as appropriate on the remaining causes of action for intentional interference with economic relationship and for dissolution of partnership. Each party to bear its own costs on appeal.

/s/ Huffman
HUFFMAN, Acting P.J.

WE CONCUR:

/s/ McIntyre
McINTYRE, J.

/s/ O'Rourke
O'ROURKE, J.

[LOGO] **Superior Court**
San Diego County, State of California

The following is a telephone ruling ruling [sic] for April 30, 2001, Department 74, the Honorable LINDA B. QUINN presiding.

Case Number 748526

The Court in ruling upon the motion for summary judgment and alternative motion for summary adjudication disregarded all evidence it considers to be incompetent and inadmissible. See, Biljac Associates v. First Interstate Bank (1990) 218 Cal. App. 3d 1410, 1419.

The Court denies defendants' motion for summary judgment and denies the alternative motion for summary adjudication as to issues one, two, three, eight, and nine of defendants' notice of motion. A triable issue of material fact exists as to whether plaintiff's claims arise out of or relate to an employment dispute as opposed to a partnership that plaintiff purportedly entered into with defendants. See, plaintiff's declaration, page 3:1-9 and page 4:4-10 and 11-17, filed in connection with plaintiff's earlier motion for leave to file a first amended complaint. A triable issue of material fact exists as to whether defendant Morris Cerullo sought out plaintiff and entered into a partnership with him. Id. A triable issue of material fact exists as to whether defendant Morris Cerullo knowingly made false representations without a promise to perform. See, plaintiff's declaration, pages 3:3 to 6:1, 6:9-17, and 6:22 to 7:9, filed in connection with plaintiff's earlier motion for leave to file a first amended complaint.

The Court grants a Code of Civil Procedure 437c(h) continuance of the summary adjudication motion with respect to issues four through six of defendants' notice of motion. Summary adjudication on issues four through six of defendants' notice of motion is continued to June 29, 2001, at 3:00 p.m., to be heard telephonically. Plaintiffs shall file and serve a supplemental opposition in connection with issues four through six no later than June 15, 2001. Defendants shall file and serve a supplemental reply in connection with issues four through six no later than June 29, 2001. The Code of Civil Procedure 437(h) continuance as to issues four through six is granted based on the attorney Dean R. Broyles opposition declaration, paragraphs 2-6.

The Court grants summary adjudication on issue seven in defendants' notice of motion to the extent the issue states, "[p]laintiff's fourth and fifth causes of action for misappropriation of a trade secret are barred as a matter of law because Plaintiff is not the owner of the subject list and therefore has no standing to sue." Causes of action four and five of plaintiff's complaint are directed at defendant MCWE. See, plaintiff's complaint, pages 15-16. Plaintiff at his deposition admitted that his complaint only alleges that defendant MCWE misappropriated one list, a confidential donor list of the Voice of the Nations. See, plaintiff's deposition, pages 684:3-9 and 687:14-21, at Exhibit A to the attorney Cynthia L. Filla supporting declaration. In opposing summary adjudication on issue seven, plaintiff claims that his deposition testimony establishes his personal ownership of the list. See, plaintiff's opposition separate statement, page 19:1-7, citing pages 331-332 of

plaintiff's deposition. This referenced deposition testimony does not establish plaintiff's ownership of the list. Plaintiff's opposition is devoid of any other evidence to establish his ownership of the list.

Requests for oral argument must be made in accordance with Local Rule 5.20.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MORRIS CERULLO WORLD EVANGELISM et al., Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent; JOHN PAUL WARREN, Real Party in Interest.	D038029 (Super. Ct. No. GIC748526) ORDER DENYING PETITION FOR REHEARING (Filed Jan. 3, 2002)

THE COURT:

The petition for rehearing is denied.

/s/ Huffman
HUFFMAN, Acting P.J.

Copies to: All parties

Court of Appeal, Fourth Appellate District,
Division One – No. D038029
S103881

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MORRIS CERULLO WORLD EVANGELISM, Petitioner,

v.

SAN DIEGO COUNTY SUPERIOR COURT, Respondent;

JOHN PAUL WARREN, Real Party in Interest.

(Filed Feb. 20, 2002)

Petition for review DENIED.

GEORGE
Chief Justice

Dean R. Broyles, Esq. S.B.N. 179535
THE LAW OFFICES OF DEAN R. BROYLES
450 A Street, Suite 505
San Diego, California 92101-4217
Tel: (619) 702-6496

Attorney for Plaintiff JOHN PAUL WARREN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION

JOHN PAUL WARREN, Plaintiff, v. MORRIS CERULLO, in his individual capacity and as President of MORRIS CERULLO WORLD EVANGELISM; MORRIS CERULLO WORLD EVANGELISM, a corporation; AND DOES 1 THROUGH 20 INCLUSIVE, Defendants.	Case No. GIC748526 COMPLAINT FOR DAMAGES FOR FRAUD & DECEIT; VIOLATION OF CAL. LABOR CODE SEC. 970; MISAPPROPRIATION OF TRADE SECRET; INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONSHIP; AND INJUNCTION GENERAL CIVIL AMOUNT DEMANDED EXCEEDS $10,000.00 (Filed May 19, 2000)

Plaintiff alleges:

PRELIMINARY STATEMENT

1. This is an action brought against MORRIS CERULLO and MORRIS CERULLO WORLD EVANGELISM (hereinafter "MCWE") for fraud, violation of California Labor Code Section 970, misappropriation of a trade secret, intentional interference with economic relationship, and an injunction. Defendant MORRIS CERULLO (hereinafter "CERULLO") made numerous misrepresentations to JOHN PAUL WARREN (hereinafter "Plaintiff"), his wife, and their four children. These misrepresentations were made to induce the Warren family to completely give up the ministries they had established in northern California, turn over their confidential ministry donor database to MCWE, and move to San Diego, California, where JOHN PAUL WARREN was promised by MORRIS CERULLO, among other things, that he would be CERULLO's "partner", "second in command", and CERULLO's "successor" at MCWE. These promises never materialized, nor were they ever intended to.

2. The evidence suggests that MORRIS CERULLO and MCWE, in spite of the many specific promises made, always intended to treat JOHN PAUL WARREN merely as an "at will" employee of MCWE. MCWE has, among other things, further harmed JOHN PAUL WARREN by writing a letter to JOHN PAUL WARREN's denominational body, the Assemblies of God, in an attempt to discredit JOHN PAUL WARREN and interfere with his prospective economic advantage.

PARTIES

3. Defendant MORRIS CERULLO, is, and at all times herein mentioned was, President of MORRIS CERULLO WORLD EVANGELISM and is a resident of Rancho Santa Fe, San Diego County, California. MORRIS CERULLO is sued both as an individual and in his capacity as President of MORRIS CERULLO WORLD EVANGELISM.

4. Defendant MORRIS CERULLO WORLD EVANGELISM is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of California, and is, and at all times mentioned herein was, qualified to do business in California with its principal place of business in San Diego County, California.

5. DOES 1 through 20 were [sic] at all times relevant herein were employees, agents, and/or members of the Board of Directors of Defendant MORRIS CERULLO WORLD EVANGELISM. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 20, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of this court to amend this complaint to allege the true names and capacities when ascertained.

6. Plaintiff is informed and believes that Defendant MORRIS CERULLO is the President of MORRIS CERULLO WORLD EVANGELISM and, at the time of taking the actions herein alleged, and at all times herein mentioned, was acting within the course and scope of his employment and authority for the Defendant MCWE, except in those instances in which it is herein alleged that

he, at least in part, acted outside the course and scope of his employment.

7. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants herein was, at all times relevant to this action, the agent, employee, representing partner, or joint venturer of the remaining Defendants and was action [sic] within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified, and authorized the acts alleged herein to each of the remaining Defendants.

FACTS COMMON TO ALL CAUSES OF ACTION

8. JOHN PAUL WARREN first met MORRIS CERULLO at MCWE's annual conference in 1995. Their ministry relationship began when MORRIS CERULLO asked JOHN PAUL WARREN to speak at a MCWE conference in India in May of 1995.

9. Between May 1995 and March of 1998, JOHN PAUL WARREN traveled full time with and on behalf of CERULLO and MCWE to countless countries, speaking at MCWE meetings and conferences. During this period, JOHN PAUL WARREN paid all of his own travel and ministry expenses and received no financial support or reimbursement for his expenses from MCWE. JOHN PAUL WARREN supported himself and paid the expenses during this period solely from his churches, his ministries, and his personal family assets. JOHN PAUL WARREN estimates that between 1995 and 1998 his travel and ministry expenses for MCWE events alone were several hundred thousand dollars.

10. JOHN PAUL WARREN was the head of several significant ministries in northern California prior to 1998. JOHN PAUL WARREN was the pastor and CEO of two churches and also was the head of an international ministry called Voice of the Nations. JOHN PAUL WARREN's salary and benefits were guaranteed for life, as long as he remained CEO of the churches. During this period, from 1995 through 1997, both of his churches began to financially support MCWE, with more than 100 of his church volunteers assisting MCWE on a monthly basis.

11. Throughout 1997 and early 1998, Defendant MORRIS CERULLO, on numerous occasions, asked JOHN PAUL WARREN and his wife Cathy to move to San Diego and assist CERULLO full time as CERULLO's "partner", "successor", and as "second in command" at MCWE. JOHN PAUL WARREN was naturally very concerned about leaving the ministries in northern California that he had spent years building, representing a lifetime of investment.

12. Throughout 1997 and early 1998, prior to JOHN PAUL WARREN's acceptance of CERULLO's offer, MORRIS CERULLO made many promises to JOHN PAUL WARREN and his wife, which include, but are not limited to the following:

> A. **"Partner"**: Defendant CERULLO stated both verbally and in writing, throughout 1997 and 1998, that JOHN PAUL WARREN was not a mere MCWE employee, but CERULLO's "partner." CERULLO states in a March 19, 1998, letter to Plaintiff that "I am not looking at you as an employee . . . [b]ut as a Partner. . . . " CERULLO confirmed this in a letter faxed to JOHN PAUL

WARREN on June 7, 1999, which states: "You were never employed by MCWE. MC [MORRIS CERULLO] brought you hear [sic], to be my partner. . . . I have never considered you are [sic] employee."

B. "**Successor**": Defendant CERULLO told JOHN PAUL WARREN in person in December of 1997 at CERULLO's home in Rancho Santa Fe that he needed a successor to head MCWE and that JOHN PAUL WARREN was to fill this role. Defendant CERULLO declared at this time that he was grooming JOHN PAUL WARREN to take over the MCWE ministry when the aging CERULLO retired, which CERULLO stated would be at the end of the year 2000. CERULLO states in a March 19, 1998, letter to JOHN PAUL WARREN concerning his place at MCWE that Plaintiff will "take over" and that CERULLO will look to Plaintiff "when it comes to the staff. . . . I would look to you to take leadership with them". Finally, CERULLO discusses in the same letter Plaintiff's "[s]tarting to take control, for the ministry."

C. "**Second in Command**": Defendant CERULLO told Plaintiff and Cathy Warren in person in December of 1997 at CERULLO's home is Rancho Santa Fe, as well as other occasions, that JOHN PAUL WARREN would be "second in command" under CERULLO at MCWE. Defendant CERULLO told JOHN PAUL WARREN that he would have authority over all of the MCWE staff. CERULLO stated in a letter dated February 19, 1998, that he wanted to create a budget for JOHN PAUL WARREN as "Associate Minister and Senior Executive Vice President" of MCWE.

D. "**Lifetime Employment**": Defendant CERULLO promised Plaintiff and Cathy Warren in person in December of 1997 at CERULLO's home in Rancho Santa Fe that JOHN PAUL WARREN would have permanent lifetime employment with MCWE. Defendant CERULLO confirmed in a letter dated February 18, 1998, writing that "Theresa and I are pleased to have you as a permanent part of our lives and ministry."

E. "**Ministry Merger**": Throughout 1997 and early 1998, Defendant CERULLO told JOHN PAUL WARREN there would be a ministry merger between MCWE and Voice of the Nations. Defendant CERULLO confirmed this in a faxed letter handwritten to Plaintiff by CERULLO on or about July 19, 1998.

F. "**Crusade Opportunities**":Defendant CERULLO told Plaintiff and Cathy Warren in person in December of 1997 at CERULLO's home in Rancho Santa Fe that JOHN PAUL WARREN would speak at MCWE crusades. Defendant CERULLO also publicly declared this on a video tape played at Christian Life Church in Santa Rosa, California, on March 13, 1998.

G. "**Church**": Defendant CERULLO also told Plaintiff and Cathy Wareen in person in December of 1997 at CERULLO's home in Rancho Santa Fe that CERULLO would purchase a Church in San Diego that JOHN PAUL WARREN would be the pastor of, if Plaintiff and his family moved to San Diego. This promise was repeated continually by CERULLO to Plaintiff through October 1999.

H. "**Television Exposure**": Defendant CERULLO promised Plaintiff that he would be a

regular on MCWE's "Victory", and the soon to be launched, "I Care" and Global Prayer Satellite Network. Defendant CERULLO personally told Plaintiff and Cathy Warren that Plaintiff would have this opportunity to speak and do ministry on or about December of 1997 at CERULLO's home in Rancho Santa Fe

I. **Confidential Ministry List**: Defendant CERULLO, on or about December 1997, asked JOHN PAUL WARREN if MCWE could use Plaintiff's confidential ministry donor list (hereinafter "LIST"). The LIST is a compilation of approximately 5,000 to 6,000 contacts that JOHN PAUL WARREN has developed over a 20 year period in his ministries. JOHN PAUL WARREN agreed to provide the LIST to MCWE, but only for the limited purpose of MCWE using the LIST to solicit "prayer", not to solicit funds. Defendant CERULLO verbally agreed to this strict confidentiality limitation. The list was thus provided to MCWE by Plaintiff.

J. **Global Prayer Satellite Network**: Defendant CERULLO, on or about the first week of January, 1997 at MCWE's Annual World Conference in Anaheim, California, promised MCWE donors, including JOHN PAUL WARREN that if they would give a gift of $1,500 to MCWE that MCWE would provide them with a satellite dish that would allow access to MCWE's Global Prayer Satellite Network, which would include live prayer training as well as live viewing of MCWE crusades throughout the nations of the world. This was also promised in MCWE fundraising letters during this period of time.

13. In December 1997, JOHN PAUL WARREN tentatively accepted Defendant MCWE's offer made by

MORRIS CERULLO's, contingent upon working out the details of the "partnership". From December 1997 through June 1998, Plaintiff, Cathy Warren, and Defendant CERULLO had several discussions to clarify the final agreement.

14. Beginning in February 1998, Defendant CERULLO began to suddenly insist that JOHN PAUL WARREN publicly resign from his ministries in northern California, which are discussed in paragraph 10 above. Although CERULLO had originally agreed that JOHN PAUL WARREN could remain head of these ministries, which CERULLO alleged would be part of the "ministry merger," CERULLO began to demand that JOHN PAUL WARREN "cut all ties and take on a new future."

15. Defendant CERULLO personally ensured that this was in fact accomplished. Without JOHN PAUL WARREN's permission or knowledge, CERULLO took the initiative to announce to JOHN PAUL WARREN's churches (via video) that JOHN PAUL WARREN had resigned from all of his ministries in northern California. CERULLO did this at an event intended to honor JOHN PAUL WARREN and his wife Cathy their 11th Anniversary of ministry on March, 13, 1998. This unexpected unilateral announcement was devastating to Plaintiff's congregations and the leadership of the churches and deeply hurtful and embarrassing for JOHN PAUL WARREN, his wife Cathy, and their children.

16. The remaining details of the agreement between MCWE and Plaintiff were mostly worked out as of March 18, 1998, in a letter from Defendant CERULLO to Plaintiff.

17. JOHN PAUL WARREN believed from the CERULLO's promises and the terms discussed in paragraphs 12 and 16 above, that he was entering a partnership relationship with MORRIS CERULLO and MCWE (hereinafter "PARTNERSHIP AGREEMENT"). However, virtually nothing was fulfilled as promised. After JOHN PAUL WARREN arrived at MCWE in March of 1998, he began to realize that there were serious problems. For example, the MCWE corporate flow chart, rather than showing him as second in command at MCWE as promised by Defendant CERULLO, only showed JOHN PAUL WARREN as Senior Executive V.P. for Mission to all the World (hereinafter "MTAW"). As such, JOHN PAUL WARREN merely had authority over a small portion of the MCWE staff. This was in spite of the fact that JOHN PAUL WARREN had previously made it clear to Defendant CERULLO that he would not resign and move to San Diego merely to head up MTAW, which he was effectively already doing for free in addition to directing his churches and international ministry.

18. Defendant CERULLO gave JOHN PAUL WARREN a letter of dismissal in Africa in April of 1999, without offering JOHN PAUL WARREN a settlement of the PARTNERSHIP AGREEMENT. Incredibly and [sic] spite of all of CERULLO's extensive promises, this was less than one year after JOHN PAUL WARREN was forced by CERULLO to leave his ministries in northern California and move his family to San Diego. Defendant CERULLO said the April 1999 dismissal letter was and [sic] accident and recanted. Defendant CERULLO, however, would "dismiss" JOHN PAUL WARREN again in June 1999 and finally on October 26, 1999.

19. JOHN PAUL WARREN traveled internationally with Defendant CERULLO extensively and had many occasions to observe CERULLO's attitudes and actions. JOHN PAUL WARREN began to confront Defendant CERULLO about several integrity issues. Specifically, JOHN PAUL WARREN confronted Defendant CERULLO about unethical and fraudulent fund raising techniques, used both at MCWE ministry events and in many of the MCWE fund raising letters written to donors. JOHN PAUL WARREN was also deeply concerned about promises made to MCWE donors (such as MCWE's failure to provide the satellites as discussed herein at paragraphs 12(J) and 23(J)) and others which, he later discovered, CERULLO never intended to fulfill.

20. Throughout his tenure at MCWE, Plaintiff performed his responsibilities in a capable and competent manner.

FIRST CAUSE OF ACTION
FRAUD AND DECEIT
(against MORRIS CERULLO and
MORRIS CERULLO WORLD EVANDELISM)

21. The allegations of Paragraph 1 through 20 are realleged and incorporated herein by reference, and Plaintiff alleges a first cause of action as follows:

22. Before Plaintiff had agreed to the PARTNERSHIP AGREEMENT with MCWE, Defendant MORRIS CERULLO, who was acting on behalf of MCWE in the recruiting of Plaintiff, made both orally and in writing the representations to Plaintiff alleged in paragraph 12 above.

Defendant MORRIS CERULLO in making these representations was in part acting within the course and scope of his employment and was, at least in part, serving a purpose of his own in carrying out the above conduct against Plaintiff. Defendant CERULLO was, at least in part, motivated by malice and ill will toward the Plaintiff.

23. The representations make by Defendants were in fact false. The true facts were that:

A. "**Partner**": CERULLO intended to from the beginning, and did in fact, treat JOHN PAUL WARREN as a mere "at will employee." This is supported by Defendant CERULLO's alleged terminations discussed in paragraph 18 above. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

B. "**Successor**": CERULLO intended to from the beginning, and did in fact, treat JOHN PAUL WARREN as a mere "at will employee." Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

C. "**Second in Command**": Defendant discovered, only after accepting CERULLO's offer and moving to San Diego, that he was not second in command on the MCWE organizational chart, he was merely head of MTAW, a small part of MCWE. MCWE's organizational chart was never changed to reflect the position promised by CERULLO. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

D. "**Lifetime Employment**": CERULLO intended to from the beginning, and did in fact, treat JOHN PAUL WARREN as a mere "at will employee." Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality yet failed to do so.

E. "**Ministry Merger**": Defendant CERULLO never initiated this promised ministry merger. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so. CERULLO in fact demanded and ensured (see paragraph 14-15 above) that Plaintiff cut off all ties with his former ministries to induce Plaintiff's complete and total reliance on CERULLO and MCWE.

F. "**Crusade Opportunities**": Defendant CERULLO only allowed JOHN PAUL WARREN to lead one MCWE crusade. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

G. "**Church**": Defendant CERULLO never purchased a church for Plaintiff and Cathy Warren to Pastor. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

H. "**Television Exposure**": No television exposure materialized for Plaintiff. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

I. **Confidential Ministry List**: Defendant CERULLO and MCWE did not limit the use of JOHN PAUL WARREN's LIST to MCWE "prayer" request correspondence as promised. MCWE has in fact used the LIST to solicit funds from JOHN PAUL WARREN's contacts and, on information and belief, continues to do so. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

J. **Global Prayer Satellite Network**: In reliance on CERULLO's promises, JOHN PAUL WARREN made a donation of $1,500 with a special offering envelope to MCWE at the Conference. MCWE never provided JOHN PAUL WARREN with the promised satellite, nor any of the other donors to his knowledge. Defendant CERULLO, as founder and President of MCWE, had it in his sole discretion to make this promise a reality, yet failed to do so.

Plaintiff discovered the truth about most of these matters later, only after he had already accepted the PARTNERSHIP AGREEMENT with the Defendant, provided MCWE with his donor list, was cut off from his ministries, and had relocated his family to San Diego.

24. When Defendant make these representations, it knew them to be false and made these representations with the intention to deceive and defraud Plaintiff and to induce Plaintiff to act in reliance on these representations in the manner hereafter alleged, or with the expectation that Plaintiff would so act.

25. Plaintiff, at the time these representations were made by Defendant and at the time Plaintiff took the

actions herein alleged, was ignorant of the falsity of Defendant's representations and believed them to be true. In reliance on these representations, Plaintiff was induced to and did accept the terms of the PARTNERSHIP AGREEMENT with MCWE, did provide MCWE his donor list, and did relocate his family to San Diego, California. Had Plaintiff known the actual facts, he would not have taken, or even considered, such actions. Plaintiff's reliance on Defendant's representations was justified because he had no reason to believe that the Defendants, a well-established Christian man and head of a well-established Christian ministry, would make such misrepresentations to him and his family.

26. As a proximate result of the fraudulent conduct of Defendants as herein alleged, Plaintiff was induced to accept the PARTNERSHIP AGREEMENT with MCWE, provide MCWE his donor list, relocate his family to San Diego, California, and was shortly thereafter terminated as discussed hereinafter, by reason of which Plaintiff has been damaged in a sum of $500,000.00 or in an amount according to proof at trial.

WHEREFORE, Plaintiff requests relief as hereafter provided.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 970 (against MORRIS CERULLO WORLD EVANDELISM)

27. The allegations of Paragraph 1 through 26 are realleged and incorporated herein by reference, and Plaintiff alleges a second cause of action as follows:

28. California Labor Code Section 970 states in relevant part:

> "No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from . . . any place outside to any place within the State . . . for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:
>
> (a) The kind, character, or existence of such work;
>
> (b) The length of time such work will last, or the compensation therefor;. . . . "

29. Labor Code section 971 makes a violation of Labor Code section 970 punishable as a misdemeanor with a fine up to $1,000.00, imprisonment up to six months, or both.

30. Labor Code sec. 972 states that an aggrieved party may collect double damages in a civil action.

31. In making the false representations, discussed in paragraphs 12 and 23 above, Defendant has violated Labor Code section 970.

WHEREFORE, Plaintiff requests relief as hereafter provided.

THIRD CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONSHIP (against MORRIS CERULLO WORLD EVANGELISM)

32. The allegations of Paragraph 1 through 31 are realleged and incorporated herein by reference, and Plaintiff alleges a third cause of action as follows:

33. JOHN PAUL WARREN is an ordained minister, having been ordained by the Assemblies of God denomination.

34. The Board of Directors (hereinafter "BOARD") of an Assemblies of God Church (hereinafter "CHURCH") located on the west coast began to consider JOHN PAUL WARREN as a candidate for their senior Pastor position on or about mid January, 2000. The CHURCH is affiliated with and governed by the Assemblies of God denomination. On or about March 5, 2000, the BOARD informed JOHN PAUL WARREN that they had unanimously voted to accept his application for their Senior Pastor position. The BOARD also informed him that a confirming vote of the congregation would be made on or about March 26, 2000. Based on this information, JOHN PAUL WARREN had every expectation that he would be hired by the CHURCH as their Senior Pastor and sold his home [sic] San Diego in preparation to move his family.

35. Defendant MCWE knew of JOHN PAUL WARREN's developing relationship with the CHURCH discussed above and MCWE was aware of JOHN PAUL WARREN's ordination with the Assemblies of God. MCWE board member Charles Blair told JOHN PAUL

WARREN during telephone conversations with Plaintiff on or about March 6 and 7, 2000, that he (Blair) had been contacted by the CHURCH as a reference for JOHN PAUL WARREN. Mr. Blair also told Plaintiff that he felt he should inform the CHURCH of the disputes between Plaintiff and the Defendants, indicating that he would hate to see Plaintiff lose the CHURCH. MCWE board member Fred C. Smith, Jr. states in the February 28, 2000, letter (discussed below) to the Assemblies of God, referring to JOHN PAUL WARREN: "I feel, given this Pastor's ordination and licensing with the Assembly of God, that you should be made aware of this situation."

36. Defendant deliberately, willfully and intentionally interfered with JOHN PAUL WARREN's relationship with the Assemblies of God and with the CHURCH. On or about February 28, 2000, the MCWE board of directors sent a letter to Reverend Thomas Trask, the General Superintendent and General Council of the Assemblies of God denomination at Springfield, Missouri, and the Reverend Ray Rachels, District Superintendent of the Assemblies of God denomination for the Southern California District. Defendant MCWE made the Assemblies of God aware of JOHN PAUL WARREN's settlement demand letter, attaching it to their letter. Defendant falsely represented in the February 28, 2000, letter to the Assemblies of God that JOHN PAUL WARREN was a "contract employee" with MCWE and "that the claims made by Pastor Warren . . . are unfounded and completely without merit."

37. The interference of Defendants described in paragraph 36 above was wrongful by some legal measure other than the interference itself in that Defendants

MCWE's representations were false and defamatory and intended to interfere with JOHN PAUL WARREN's relationship with the Assemblies of God denomination generally, his employment opportunity with the CHURCH, and his future employment opportunities within the Assemblies of God denomination.

38. The relationship between JOHN PAUL WARREN and the CHURCH was in fact disrupted in that the BOARD has now indefinitely delayed further discussions with JOHN PAUL WARREN about the Senior Pastor position as a result of Defendant MCWE's conduct. Also, his relationship with the Assemblies of God denomination has been severely disrupted and damaged as a result of Defendants action, including Plaintiff's future employment opportunities, since the Assemblies of God is the recommending body for all of its Churches.

39. As a proximate cause of Defendant MCWE's conduct and the break down of employment discussions with the CHURCH and the disruption of his relationship with the Assemblies of God, JOHN PAUL WARREN has suffered damages in an amount according to proof at trial.

40. Defendant MCWE, unless restrained, will continue to interfere and disrupt other ministerial relationships between JOHN PAUL WARREN and others, to JOHN PAUL WARREN's great and irreparable injury, for which damages would not afford adequate relief, in that they would not completely compensate JOHN PAUL WARREN for the injury to his ministry reputation and good will.

WHEREFORE, Plaintiff requests relief as hereafter provided.

FOURTH CAUSE OF ACTION MISAPPROPRIATION OF TRADE SECRET – DONOR LIST – STATUTORY (against MORRIS CERULLO WORLD EVANGELISM)

41. The allegations of Paragraph 1 through 40 are realleged and incorporated herein by reference, and Plaintiff alleges a third cause of action as follows:

42. Plaintiff was in possession of a confidential donor list of ministry contacts that he had developed over his 20 years of ministry, prior to coming to MCWE. This list was the result of a substantial amount of time, energy, and money on the part of Plaintiff and included donors who gave money to his ministries and ministry efforts.

43. Plaintiff's donor list had economic value in that it contained confidential information not generally known within the trade and represented many years of research and client communications. Plaintiff made reasonable efforts to insure that the donor list remained a secret by keeping the database on a special secured computer and only allowing authorized persons access according to established written policies.

44. Plaintiff's donor list was a trade secret which merited legal protection from defendant MCWE's misappropriation in that: 1) defendant repeatedly solicited the donors of Plaintiff with the intent to injure Plaintiff; 2) Plaintiff is informed and believes and thereon alleges that Defendant sought out Plaintiff's preferred donors whose

information is particularly profitable and whose identities are not generally known in ministry fund-raising; 3) in the area of ministry fund-raising a church's donors ordinarily donate funds only one church or ministry; 4) established giving relationships between ministries and donors normally continue unless interfered with.

45. On or about December 1997, Defendants, and each of them misappropriated the above described customer list of Plaintiff by merging Plaintiff's list with the MCWE donor database and later soliciting funds from the donors on Plaintiff's list.

46. As a proximate result of the misappropriation of Plaintiff's donor list, Plaintiff has suffered actual damages in an amount to be proven at trial. As a further proximate result of the misappropriation, Defendant MCWE was unjustly enriched by soliciting funds from Plaintiff's donors on the list and rasing funds from Plaintiff's donors in an amount to be proven at trial.

47. Defendant's wrongful conduct in misappropriating Plaintiff's donor list, unless and until enjoined and restrained by an order of this court, will cause great and irreparable injury to Plaintiff's ability to raise funds from his donor list for his ministry efforts.

48. Plaintiff has no adequate remedy at law for the injuries currently being suffered in that Defendant MCWE will continue to misappropriate Plaintiff's donor list and Plaintiff would be required to maintain a multiplicity of judicial proceedings to protect his interest.

FIFTH CAUSE OF ACTION MISAPPROPRIATION OF TRADE SECRET – DONOR LIST – COMMON LAW (against MORRIS CERULLO WORLD EVANGELISM)

49. The allegations of Paragraph 1 through 48 are realleged and incorporated herein by reference, and Plaintiff alleges a third cause of action as follows:

50. On or about December 1997, Defendants, and each of them misappropriated the above described donor list of Plaintiff by merging Plaintiff's list with the MCWE donor database and soliciting funds from the donors on Plaintiff's list, in spite of their explicit promise not to.

51. As a proximate result of the misappropriation of Plaintiff's donor list, Plaintiff has suffered actual damage in the nature of lost donations because of MCWE's solicitation of his donors in an amount to be proven at trial.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

1. For compensatory damages according to proof, including lost earnings and other employee benefits, costs of seeking other employment, and damages for emotional distress, humiliation, and mental anguish;

2. For double damages pursuant to California Labor Code sec. 972;

3. For interest on lost earnings and benefits at the prevailing legal rate;

4. For an order requiring Defendant MCWE to show cause, if they have any, why they should not be enjoined as set forth below, during the pendency of this action;

5. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining Defendant MCWE, its board members, officers, agent, employees, from:

a. making any false misrepresentations to or otherwise harassing JOHN PAUL WARREN's ministry contacts concerning their relationship with JOHN PAUL WARREN;

b. further use of Plaintiff's donor list for any purpose, including, but not limited to soliciting funds.

6. For reasonable attorney's fees incurred by Plaintiff in obtaining the benefits due him under the employment contract with Defendant;

7. For costs of suit incurred by Plaintiff;

8. For such other and further relief as the Court deems proper.

DATED: May 19, 2000

Respectfully submitted:

/s/ Dean R. Broyles

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